

**Minutes**  
**WARRICK COUNTY AREA BOARD OF ZONING APPEALS**

Regular meeting to be held in the Commissioners Meeting Room,  
Third Floor, Historic Courthouse,  
Boonville, Indiana  
March 26, 2018 at 6:00 P.M.

**PLEDGE OF ALLEGIANCE**

**MEMBERS PRESENT:** Terry Dayvolt, Vice Chairman; Doris Horn, Paul Keller, Mike Moesner, Jeff Willis, Mike Winge.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director, and Molly Barnhill, staff.

**MEMBERS ABSENT:** Jeff Valiant, Chairman

**MINUTES:** Upon a motion made by Doris Horn and seconded by Mike Winge the Minutes of the last regular meeting held February 26, 2018 were approved as circulated.

Vice Chairman, Terry Dayvolt explained the rules of procedure.

**BZA-SU-18-03**

**APPLICANT:** Husk Signs by Kip Husk, President

**OWNER:** SMI RV Parts & Accessories Inc. Peter Schuck, owner

**PREMISES AFFECTED:** Property located on the west side of SR 66 approximately 120 feet north of the intersection formed by SR 66 and Loehr Rd. Ohio, Twp. 7457 SR 66

**NATURE OF CASE:** Applicant requests a Special Use, SU 8, for the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a 4' x 10' Electronic message board in a "C-3" Highway Commercial Zoning District. *Complete legal on file (Advertised in The Standard March 15, 2018)*

Kip Husk was present.

Mrs. Rector stated they have all of the return receipts. She said the existing land use is commercial. She said the surrounding zoning and land use is the property to the north is R-2B with apartments; property to the east is M-1 and M-2; the property to the south is C-3 with a storage facility and R-1A with residences and the property to the west is R-1A with residences. She said there is no floodplain and they have an existing driveway on SR 66. Mrs. Rector stated the sign is to be located 5' from the right-of-way of SR 66. She said Vectren has electric poles in the right-of-way but have given us a letter of no objection with the stipulation that the

owner/contractor shall maintain all applicable OSHA and National Electric Safety Code clearances. She said the sign at the peak will be approximately 18' high. She said the sign cabinet will have 2 different cabinets; one will be 4'5" by 10' and the other cabinet will be 6' by 10'. She said the square footage of the sign will be 105 square feet but the message center will only be 45 square feet. She added the applicant's proposed statement: "construction of new pole sign with electronic message center".

Ascertaining no questions from the Board and no remonstrators present the Vice Chairman called for a motion.

I, Mike Moesner, make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

- a. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
- b. Subject to all public utility easements and facilities in place.
- c. Subject to obtaining an Improvement Location Permit.
- d. Subject to obtaining any Building Permits needed.
- e. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
- f. Subject to no use of the words, "stop", "danger", "look", or any other word which would confuse traffic.

g. Subject to no revolving beams of light or strobe lights.

The motion was seconded by Mike Winge and unanimously carried.

Mrs. Rector stated their approval would be done by Wednesday.

**BZA-SU-18-04**

**APPLICANT & OWNER:** Access Storage Now, LLC by Chris Tretter, member

**PREMISES AFFECTED:** Property located on the east side of SR 261 approximately 930 feet northeast of the intersection formed by SR 261 and Peachwood Dr, lot number 12B in Peachwood of Warrick Place VI Subdivision. Ohio, Twp. 3644 SR 261

**NATURE OF CASE:** Applicant requests a Special Use, SU 23, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow a self-storage warehouse facility with outside storage in a “C-3” Highway Commercial Zoning District. *Complete legal on file (Advertised in The Standard March 15, 2018)*

Chris Tretter was present.

Mrs. Rector stated we have all of the green cards and pay receipts. She said the existing land use is a self-storage warehouse facility. She said the surrounding zoning and land use is to the north and east is agricultural, Castle High School parking and practice fields; also to the north is R-1A with residences. She said to the south is agricultural, Castle Middle School North, and C-3 and C-4 with commercial businesses and to the west is C-4 PUD with a car wash being built on one parcel and the others are vacant. She said there is no flood plain and the existing entrance is off of SR 261. She said the ordinance states that every zoning district except “M-1” Light Industrial and “M-2” General Industrial zoning districts require a special use to be obtained for outside storage. Mrs. Rector said the applicant’s proposed statement: “Access Storage operates a state-of-the-art self-storage facility at 3644 SR 261. We offer standard and temperature control units in a variety of sizes. Our customers ask us to offer surface parking for RV’s, boats, and trailers. We have a flat 190’ x 85’ area that can serve this purpose. Approval of our application will allow us to provide this offering.”

Chris Tretter stated they get requests from their customers to provide this service for several reasons. He said number one is that they don’t have the room to park an RV or boat and the second reason is they are restricted by CC&R’s and we have that opportunity to provide that product.

Jeff Willis stated he is going to sit this conversation out.

Mike Moesner asked how many spaces they would have.

Chris Tretter said there will be 14 spaces there.

Mike Moesner said he assumes they could be rented monthly or quarterly.

Christ Tretter said that is correct.

Ascertaining no questions from the Board and no remonstrators present the Vice Chairman called for a motion.

I, Paul Keller, make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

- a. Subject to the property being in compliance at all times with the applicable zoning Ordinances of Warrick County.
- b. Subject to all public utility easements and facilities in place.

Doris Horn seconded the motion. Motion was unanimously carried. Jeff Willis abstained.

**BZA-SU-18-05**

**APPLICANT & OWNER:** IND-KY-ILL Enduro Riders Association Inc by John R. Schuler V.P.

**PREMISES AFFECTED:** Property located on the north side of SR 68 approximately 2700 feet west of the intersection formed by SR 68 and Friendship Rd, Lynnville 588 *E SR 68*

**NATURE OF CASE:** Applicant requests a Special Use, SU 1, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow: a private non-commercial recreational area uses and facilities in an "A" Agricultural Zoning District. *Complete legal on file (Advertised in The Standard March 15, 2018)*

Dan Schuler, club member was present.

Mrs. Rector stated we have all of the return receipts. She said the existing land use is vacant. She said the surrounding zoning and land use is the property to the north is zoned agricultural and recreation and conservancy being Interlake State Recreation Area. She said the property to the east is zoned agricultural and has the Erie Canal Beagle Club. She said the property to the south is zoned agricultural and recreation and conservancy being Interstate 64 and the property to the west is zoned agricultural and recreation and conservancy and is also part of Interlake State Recreation Area. She stated there is no flood plain and they have an existing driveway on SR 68. She said the applicant has told the office they will not be having races on their property. She said they will have members camping so they will have easy access and a place to stay so they can use Interlake State Recreation Area to ride their ATV's. Mrs. Rector added that Aaron Franz, Warrick County Health Department, said they didn't need anything from his office but recommended they check with the State Health Department. She said the Indiana State Health Department emailed a letter stating they wouldn't need on-site system from their office but directed the club to check with Indiana Department of Homeland Security regarding their requirements. She said the applicant's proposed statement: "Building pole barn for storage bikes, trailers, tools. Having meetings inside and camping outside members only. No running water pot johns". Mrs. Rector said so it will just be for occasional meetings and for storage of their equipment and camping every once in a while. She said she has spoken with Attorney Doll and Guy Gentry about this and they have determined this would not fall under the race track it would be just like a private recreational facility and that is why they are just getting the Special Use.

Mr. Schuler stated they have a couple of 16' trailers and stuff and they have them scattered between his brother himself and a couple other members and they want to get it all located in one area. He said they are big supporters of family and he's been blessed in his life and he has kids and grandkids fixing to enjoy this sport and they promote family values and they look forward to having a place where they can keep all of their equipment area.

Mike Moesner said he is familiar with that area thinks it is a good use for it.

Ascertaining no questions from the Board and no remonstrators present the Vice Chairman called for a motion.

I, Doris Horn, make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.

3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

- a. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
- b. Subject to all public utility easements and facilities in place.
- c. Subject to an Improvement Location Permit being obtained.
- d. Subject to a Building Permit being obtained.
- e. Subject to no races being held on the property.
- f. Subject to the Indiana State Board of Health Department & Indiana Homeland Security Department requirements.

The motion was seconded by Paul Keller and unanimously carried.

Mrs. Rector stated their approval would be ready to be picked up by Wednesday.

**BZA-V-18-06**

**APPLICANT & OWNER:** Melvin & Angie Dotson

**PREMISES AFFECTED:** Property located on the east side of SR 261 approximately 1400 feet south of the intersection formed by SR 261 and Maxville Rd. Skelton, Twp. *Complete legal on file*

**NATURE OF CASE:** Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a SFD on a property with an existing pool house and not meeting the 50' frontage requirement, having only 40' of road frontage in an "A" Agricultural Zoning District.

Melvin & Angie Dotson were present.

Mrs. Rector stated we are missing one green card from Chad & Bridget Coffelt but we do have all of the pay receipts showing they were mailed on time and to the correct addresses. She said

so when they get that they need to bring it in. She said the existing land use is a pool house/garage. She said all of the surrounding properties are zoned recreational and conservancy with residences or vacant. She said there is no flood plain and the property has an existing driveway on Yankeetown Rd. She said the property used to have a residence on it with a construction year of 1920, but it has been demolished. She said the property has an existing pool house. She said the property has a 40' frontage which doesn't meet the requirement of today's ordinance which is 50' so it is not something they have created; it is an existing lot. She said the applicant's proposed statement: "Existing home has been removed and I would like to build a log cabin."

Melvin Dotson said he thought she said Yankeetown Road but it's on SR 161.

Mrs. Rector said well up here it says Yankeetown Road but she was just reading; up here it says State Road 261. She said strike Yankeetown Road. She said so you live on Yankeetown Road now but you are moving to SR 261.

Angie Dotson said it is 161.

Mrs. Rector said so it is on 161 by Maxville Road, 1400 feet so it's State Road 161.

The Vice-Chairman said the property located on the east side of SR 161 approximately 1400 feet south of the intersection formed by SR 161 and Maxville Rd. Skelton, Twp. and now the complete legal is on file.

Mike Moesner asked if they planned on starting building right away.

Melvin Dotson said it depends on what the weather does. He said they have one estimate and the basement crew lined up.

Mike Moesner said so you are putting a basement out there too.

Melvin Dotson said yes.

Ascertaining no questions from the Board and no remonstrators present the Vice Chairman called for a motion.

I, Mike Moesner, make a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of

the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.

3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is it is a pre-existing non-conforming use because it was a 1920 home, our lot sizes didn't require 50' of frontage at the time and now we do.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
  - a) Subject to an Improvement Location Permit being obtained.
  - b) Subject to a Building Permit being obtained.
  - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.



d) Subject to all utility easement and facilities in place.

The motion was seconded by Mike Winge and unanimously carried.

Melvin Dotson asked if the Variance would expire in 6 months.

Attorney Doll said only if you don't act on it. He said if you don't get your permit and get started; you have a 6 month window and you can extend it one additional 6 month period of time if need be. He said the Variance is forever but you have to come get your permit so you can get started within that 6 month window.

Mrs. Rector informed the owner they could pick up their approval on the following Wednesday so when they can come into the office and they will give them a copy and explain it all to them.

### **OTHER BUSINESS:**

#### **BZA-V-15-18**

**APPLICANT & OWNER:** Daniel G. & Sally S. Rainey 10540 Yellowbanks Trail.

The applicant's received a variance on November 25, 2015 allowing a manufactured home being placed on the property with another residence. The owners were given 120 days from the certificate of occupancy being issued to remove the other residence. The certificate of occupancy was issued on June 15, 2016 and the residence is still standing.

Sally Rainey was present.

Mrs. Rector stated we sent the Rainey's a letter on March 5<sup>th</sup>. She said we go back through the permits where Variances were granted for a certain time period and then we check with the Building Department on when the certificate of occupancy was issued and it was issued on June 15<sup>th</sup> so the other home should have been removed by October 13<sup>th</sup> of 2016. She said so we notified Mrs. Rainey, she called the office and said they had started taking the windows out at that time, that was on March 6<sup>th</sup>. She said she asked her to come to the Board and she will have to ask them for an additional amount of time if it is not gone.

Mrs. Rainey said no the house is still standing. She said the roof has holes in it and it's not livable. She said they just ran out of money. She said she knows that's not an excuse but they didn't know the double wide was going to cost so much. She said now they are in the process of trying to get it down. She said they have Travis Bailey hired to remove it and he said about 3 weeks because of the rain. She said she did get her permit to tear it down.

Mrs. Rector asked if she meant the demolition permit from the Building Department.

Mrs. Rainey said yes.

The Vice Chairman asked what it was dated.

Mrs. Rainey said it was issued 3-16-2018.

Mike Moesner said he understands that the weather conditions are such that you can't do much right now but within 30 days you might be able to get back on it but we need to get it down if we can.

Mrs. Rainey said we already have the money for it to be torn down and that part is taken care of; they are ready for this man to come and demolish it and she said take pictures and that is what we are going to do.

Attorney Doll stated because it is way past, like 17 months past the deadline, to take it down it's a violation of our County Zoning Ordinance; for two residences to exist on a single plat. He said that zoning ordinance has a provision in it for enforcement that says a court action can be filed against the property owners and a judge would decide what remedies ought to be imposed. He said one of the options he has is to assess civil fine for not complying with the permit requirement to have the house down within 120 days from the certificate of occupancy. He said the civil fine is at the discretion of the judge not to exceed 300 dollars per day. He said so it gets to be pretty expensive if this happens. He said so his advice to his Board is to pick a number; if it's bad weather and it's going to interfere with the ability to tear it down and he thinks it's going to take 3 weeks to tear it down. He said he doesn't recommend that they give them a month. He said maybe we ought to give them 2 months but with the understanding that if it isn't down in whatever time period this Board decides then they can tell him to go to court and if that happens then she is at the mercy of the judge. He said the one thing that bothers him in this case is that they waited until they got the letter to come back in to tell them what had happened and they waited 17 months. He said this isn't a situation where they are a day or two beyond the time limitation. He said 17 months sounds like to him that if they hadn't gotten the letter maybe they never would have come back to talk to them about this and that's not right. He said so it is up to the Board to give her a reasonable amount of time with the understanding that if it's not down within that period of time they have the right to direct him to go to court.

Doris Horn asked when did they say Travis was going to start.

Mrs. Rector asked if he said he was going to start in 3 weeks or it would take him about 3 weeks.

Mrs. Rainey said it would take him about 3 weeks to get to them.

Mrs. Rector said okay so it will be at least 3 weeks.

Attorney Doll said unless he is doing it by hand this isn't going to take 3 weeks, maybe a week.

Mike Winge asked if there was a basement.

Mrs. Rainey said it has a cellar.

Mike Winge said so there will have to be some filling.

The Vice Chairman said they would not be able to leave the cellar open, they will have to fill it.

Mike Winge said if you look at the rain and stuff coming on it will be a tough thing, 2 months is probably cutting it close.

Attorney Doll said it ought to be a little bit less than 2 months only because we have another meeting to decide if it's down or not in 2 months so 6 weeks.

Mike Winge said lets do something like that, say 6 weeks and see what the progress is on it.

Mrs. Rector said so 6 weeks and it would be back on the May agenda.

The Vice Chairman called for a motion.

Mike Winge made a motion to give them 6 weeks to give a progress report.

Doris Horn seconded the motion.

Mrs. Rector said she is confused by the 6 weeks.

Attorney Doll said the Rainey's will have the house down in 6 weeks and bring us proof after that period of time that the house has been taken down. He said that is twice the time period their demolition fella said. He said that way be the May meeting they can tell the Board that they comply or they haven't complied and at the May meeting they can make a determination.

Mrs. Rector said so within 6 weeks they should bring something into the office to show that the house has been removed unless we run into severe weather from now through that whole 6 weeks.

Mike Winge said yes, that's unlikely but still a possibility.

Doris Horn said they want it removed and the cellar filled.

Attorney Doll said yes that is a safety factor.

The Vice Chairman said so the motion is that the house should be down within 6 weeks, the cellar filled, and Mrs. Rainey will come in and contact Sherri and have proof that the house is down, if not don't wait until after that 6 weeks is up to tell us that it's 6' deep in water and we couldn't get to it.

The motion carried unanimously.

Attorney Doll said Mrs. Rainey that date in 6 weeks is the 7<sup>th</sup> of May and the next meeting is on the 29<sup>th</sup> of May.

### **ATTORNEY BUSINESS:**

Attorney Doll said beginning on April 3<sup>rd</sup> they had the first round of hearings on the judicial review of Prime Foods eggs laying process which this Board approved. He said it's a 2 day hearing that is strictly on the issue of standing. He said we are contesting that the Cobbs, and Anthony is still in the case but he has reached a settlement with Prime Foods that hasn't been completed to the point to where he has withdrawn from the case but he isn't participating in the lawsuit. He said we are challenging the Cobbs entitlement to a judicial review because we are alleging that they are not aggrieved parties; the approval process for the egg laying facility does not reduce the value of their property and does not impair their land in any way. He said this hearing is strictly to determine if the Cobbs are aggrieved and have a legal right to a hearing or if they are not aggrieved then the case will end. He said last week he called the court because their judge has been out for medical leave since February and he called to verify because he will just be going back on the bench the Monday after Easter. He said they were going so everybody was getting ready but this morning the court called and said the judge does not believe that he will be medically capable of sitting on the bench for 2 days and he has vacated their hearing date. He said so they asked to not have a senior judge because that would mean another judge would come in and they also didn't want a second set case. He said they have witnesses so they do not want to be a second set case. He said they asked for the first two consecutive days, first-set trial dates and they were given July 25<sup>th</sup> and July 26<sup>th</sup>.

The Vice Chairman asked if the Cobbs have ever answered any interrogatories or anything like that.

Attorney Doll said sort of. He said the Cobbs are without legal counsel they have sent a lot of text messages that they thought were answers to discovery which doesn't meet the statutory criteria of discovery answers so they've given some information but it is not in the right format.

### **EXECUTIVE DIRECTOR:**

None.

Being no further business the Vice Chairman called for a motion.

Mike Winge made a motion to adjourn the meeting. Motion was seconded by Doris Horn and unanimously carried. The meeting adjourned at 6:46 p.m.

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Terry Dayvolt, Vice Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held March 26, 2018.

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Sherri Rector, Executive Director